Although no party has a right to be heard before a Judge exercising his powers of revision, yet I granted permission for the accused and a deputy public prosecutor to appear and address the Court before I exercised my powers of revision under Chapter XXXI of the Criminal Procedure Code. The accused admitted that he had fallen a prey to the drug habit and had stolen his father's wrist watch for which offence he received his first conviction and sentence in 1981. He has then attended the drug rehabilitation centres at Bukit Mertajam, Penang, Besut, Trengganu, and Sungei Besi, Selangor, but unfortunately has still not been able to kick the drug habit as a result of which he had to steal and sell the plates and other crockery from his own home in order to raise money to buy drugs.

In my view neither the facts of this case nor the past record of the accused justified the order for police supervision and I would with respect agree with the following *dictum* of Rigby J. (as he then was) when His Lordship said in the case of *Re Bakar bin Ahmad*[1] as follows:-

"Police supervision should not be imposed by way of an additional punishment. Its sole object and only justification, as I understand it, is to ensure that in the interests of public security the Police are in a position to exercise some measure of control over the movements and activities of persons of known bad character – such as burglars, pickpockets and common thieves – who habitually and consistently lead a life of criminal dishonesty."

I also agreed with Rigby J. in that case that the power to impose police supervision is a measure that should be sparingly resorted to by Magistrates and then only in the most appropriate cases. In this case I would also point out that the powers contained in the following provisions of section 295(i) of the Criminal Procedure Code (F.M.S. Cap. 6) are not mandatory and that the Courts have a discretion in the circumstances of each case to decide whether or not to impose a sentence of police supervision in addition to any other punishment:-

"When a person having previously been convicted of an offence punishable with imprisonment for a term of two years upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards–

(a) the High Court or a Sessions Court may direct that he be subject to the supervision of the police for a period of not more than three years commencing immediately after the expiration of the sentence passed on him for the last of such offences;

(b) a Court of a Magistrate may direct that he be subject to the supervision of the police for a period of not more than one year commencing immediately after the expiration of the sentence passed on him for the last of such offences."

The order for police supervision in this case was accordingly set aside by me and the accused need only serve the two years' imprisonment with effect from the date of arrest which I considered was already sufficiently severe in the circumstances of this case.

Order accordingly.

PUBLIC PROSECUTOR v. LIM BOON HOCK & ORS.

[O.Cr.J. (Yusoff Mohamed J.) November 20, 1984]

[Johore Bahru – Criminal Trial No. 8 of 1981]

Criminal Law and Procedure – Consent to prosecute – Amount of dangerous drugs stated therein – Amending charge to state lesser amount of the drugs – Public Prosecutor conducting prosecution – Whether consent valid.

Dangerous Drugs – Trafficking in raw opium – Plea of guilty – Substantial quantity of dangerous drugs – No mitigating factors – Death sentence – Dangerous Drugs Act, 1952, ss.39B(1) (a) & 39B(3) – Penal Code, s.34.

The three accused were charged with trafficking in dangerous drugs, to wit 38.8078 kg. of raw opium, contrary to section 39B(1) (a) of the Dangerous Drugs Act 1952. Before the charge was read the Deputy Public Prosecutor requested the court to decide on a preliminary point as he wished to reduce in the charge the amount of raw opium by 0.0001 kg, *i.e.* from 38.8079 kg. to 38.8078 kg. The main question in this case was whether the Public Prosecutor's original consent under section 39B(3) of the Act was valid. Eventually, the 1st accused pleaded guilty to the amended charge which was withdrawn against the 2nd and 3rd accused.

Held: (1) the consent was valid as the Public Prosecutor himself conducted the prosecution. It was given for a larger amount of dangerous drugs and in any event the difference in weight was so minimal as to derogate the essence of the offence of trafficking in dangerous drugs to other offences in the Act. The difference did not prejudice the accused;

(2) in view of the substantial quantity of dangerous drugs involved, the 1st accused had no mitigating factors in his favour and should be sentenced to death.

Editorial Note: The 1st accused has appealed against the above decision in F.C.C.A. No. 47 of 1984. A Notice of Appeal was filed on November 5, 1984.

Case referred to:

(1) *Public Prosecutor* v. *Oie Hee Koi* [1968] 1 M.L.J. 148, 154.

CRIMINAL TRIAL.

Mohamed Elyas Majeed for all 3 accused.

Balia Yusof bin Wahi (Deputy Public Prosecutor) for Public Prosecutor.

Cur. Adv. Vult.

Yusoff Mohamed J. : The Accused, Lim Boon Hock was charged with two others, Lim Ah Lek and Ho Poh Gek for trafficking in dangerous drugs, to wit, 38.8078 kg. of raw opium on August 19, 1981 at about 11.30 a.m. at the Customs Checkpoint, Causeway, Johor Bahru, contrary to Section 39B (1) (a) of the Dangerous Drugs Act 1952, (the Act).

Before the charge was read to all the three Accused the learned Deputy Public Prosecutor wished to amend the charge and requested the Court to make a decision on a preliminary point relating to the consent to prosecute issued by the Public Prosecutor under Section 39B (3) of the Act. This consent to prosecute the Accused dated September 23, 1981 was for trafficking in dangerous drugs amounting to 38.8079 kg. of raw opium. Now the learned Public Prosecutor wished to amend the charge against all the three Accused for trafficking in 38.8078 kg. of raw opium which amount differed by 0.0001 kg. less. The question was whether the Public Prosecutor's consent originally produced was valid. The learned Deputy Public Prosecutor's contention was that the consent was valid because the difference in the amount of the drugs there was minimal and it did not prejudice the Accused. He distinguished this case with the Penang's case (no reference given) where the word "B" in Section 39B was omitted in the charged and hence the consent was held invalid.

The learned counsel for the Accused did not seriously object to the amended charge but contended that a fresh Public Prosecutor's consent was required because of different amount of drugs shown in the charge as compared to that given in the consent.

I held that the consent was valid first, on the ground that in this case the Public Prosecutor himself conducted the prosecution and the consent as required under section 39B (3) of the Act was implicit in his presence. See *Public Prosecutor* v. *Oie Hee Koi & Associated Appeals*[1]. Secondly, the consent given by the Public Prosecutor was for a larger amount of dangerous drugs than the amount referred to in the charge and in any event the difference in the weight was so minimal as to derogate the essence of the offence of trafficking in dangerous drugs to other offences in the Act. For this reason the difference in the amount did not, in my opinion, prejudice the Accused.

Consequent to this ruling the amended charge was read and explained to all the three Accused. Accused 1, Lim Boon Hock, pleaded guilty to the charge but Accused 2 and 3 claimed to be tried. The nature and consequence of the plea by Accused 1 was explained to him particularly the provision of the law relating to this offence which carries capital punishment. His counsel was asked by the Court whether he was consulted by Accused 1 in making that plea. The Counsel's reply was in the affirmative. The case was adjourned to the afternoon for Accused 1 to reflect upon his plea. When the court resumed at 2.30 p.m. Accused 1 was again asked about his plea and he insisted that he wanted to maintain his plea of guilty.

The facts of the case were given by the learned Deputy Public Prosecutor as follows:-

Acting on information received, a party of Customs Officers stationed themselves at the Customs Checkpoint at the Causeway at Johor Bahru on August 19, 1981, on the lookout for a car bearing Singapore registration No. EG 8382Z.

At about 11.30 a.m. on August 19, 1981, a Mercedes Benz bearing the same registration number was stopped by the party and was brought to the Customs Complex, Johor Bahru. The car was driven by Lim Boon Hock, the 1st Accused. There were also two other persons and a small girl in the said car.

Upon examination of the said car, the Customs party found 13 packages hidden under the rear seat of the car and another 12 packages were also found hidden behind the backrest of the rear seat of the car. These packages were found to contain raw opium. All the three persons in the car were detained and the packages together with the vehicle were also seized by the Customs.

The packages were then sent to the Chemistry Department for analysis and they were found to contain 38.8078 kg. of raw opium.

All the three persons were subsequently charged for trafficking in dangerous drugs under

section 39B of the Dangerous Drugs Act 1952 read with section 34 of the Penal Code.

The facts were explained to Accused 1 in the presence of his Counsel and he admitted all the facts to be true.

From the facts it is revealed that Accused 1 had custody of the amount of drugs referred to in the charge and that under the presumption in section 37(d) of the Act he was deemed to have been in possession of such drugs. There was no proof to the contrary from Accused 1 and under the Act he was assumed to have known the nature of such drugs. I was satisfied that the charge was proved and accepted the plea of guilty from Accused 1. I convicted him.

The Prosecution withdrew the charge against Accused 2 and 3 and I accordingly acquitted them.

In mitigation, the learned Defence Counsel pleaded for the alternative sentence of life imprisonment to be imposed against Accused 1 which was optional before 1983 considering that this was his first offence and that he had shown remorse and was helpful to the Customs.

In view of the substantial quantity of dangerours drugs involved, I was of the opinion that the Accused had no mitigating factors in his favour. If transaction of such substantial quantity of prohibited drugs was successfully carried out, many innocent people would be affected. The consequence would be very damaging to the public and too well known both to members of the public and the Accused himself.

I sentenced Accused 1 to death as required by law and the sentence of death was duly pronounced. Accused 1 now appeals against this decision.

Order accordingly.

Solicitors : *Elyas Majeed & Co.*

ZAKARIYA BIN MUSA v. PUBLIC PROSECUTOR

[A. Cr. J. (Gunn Chit Tuan J.) September 11 & 13, 1984]

[Kuala Lumpur – Selangor Criminal Appeal No. 77 of 1983]

Criminal Law and Procedure – Sentencing – Charge of theft of motor car – Appeal against sentence – Penal Code (F.M.S. Cap. 45), s. 379.

Penal Code, s. 379 – Theft – Plea of guilty – Sentence.

The appellant had pleaded guilty to a charge of theft of a motor car. He was sentenced to 2½ years imprisonment and a fine of $3,000/- or in default 6 months' imprisonment. The appellant appealed against the sentence.

Held: if it was really necessary to impose a fine in addition to the custodial sentence, then the trial magistrate should have taken into consideration, *inter alia*, the financial circumstances of the appellant, the profit arising from the offence, the value of the subject-matter and the amount of injury, if any, inflicted. In this case the sentence was manifestly excessive and the order of the fine in addition to imprisonment should be set aside.

Cases referred to:-

(1) *Tan Kah Eng* v. *Public Prosecutor* [1965] 2 M.L.J. 272.
(2) *Re Fong Ah Hee* [1958] M.L.J. 96, 97.
(3) *Rex* v. *Teo Woo Tin* [1932] M.L.J. 124.

CRIMINAL APPEAL.

K. Chandra for the appellant.

Affendi Hamzah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: The appellant in this case was charged for theft of a motor-car in the Magistrate's Court, Petaling Jaya. He pleaded guilty to the said offence and was sentenced to 2½ years imprisonment and a fine of $3,000/- or, in default six months' imprisonment, to be followed by one year's police supervision.

Mr. Chandra, who appeared for the appellant, contended that the sentence was manifestly excessive as the maximum sentence for theft was three years. He pointed out that although the appellant was a security guard, he has been dismissed from his job and was unable to pay the fine. Counsel referred to *Tan Kah Eng* v. *Public Prosecutor*[1] in which case a seamstress was convicted of carrying on a public lottery contrary to section 4(1) (c) of the Common Gaming Houses Ordinance, 1961, and was sentenced to a fine of $3,000/- or, in default six months' imprisonment. She appealed against sentence and Ambrose J. (as he then was) held that